

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LAI CHAN, HUI CHEN, and XUE XIE, individually and
on behalf of all others similarly situated,

1:15-CV-09605 (KBF) (SN)

Plaintiffs,

- against -

CHINESE-AMERICAN PLANNING COUNCIL HOME
ATTENDANT PROGRAM, INC.,

Defendant.

X

**AFFIRMATION OF KENNETH KIRSCHNER IN SUPPORT OF DEFENDANT’S
MOTION TO COMPEL ARBITRATION OF THE MATTER AND
STAY THE PROCEEDINGS PENDING ARBITRATION**

KENNETH KIRSCHNER, under penalties of perjury, hereby affirms:

1. I am a partner with the firm of Hogan Lovells US LLP, counsel for Defendant Chinese-American Planning Council Home Attendant Program, Inc. (“CPC”). I am an attorney duly admitted to practice in this Court. I submit this affirmation in support of Defendant’s Memorandum of Law in Support of Its Motion to Compel Arbitration of the Matter and Stay the Proceedings (“Motion”), and to place before this Court true and correct copies of certain documents in support of the Motion. I am fully familiar with the facts set forth herein.

2. Plaintiffs and all putative class members are members of 1199 SEIU United Healthcare Workers East (“1199”). CPC and 1199 have had a collective bargaining agreement (“CBA”), which, as modified and extended by memoranda of agreement (“MOA”), has governed the employment relationship between CPC and Plaintiffs for the entirety of the class period alleged, from 2009 to the present.

3. In the most recent MOA, dated December 7, 2015, CPC and 1199 agreed to amendments requiring Plaintiffs to submit all their wage and hour related claims to a mediation and arbitration process in an alternative dispute resolution procedure under the CBA.

4. CPC initiated the mediation and arbitration procedure pursuant to the terms of the agreement and such process has already commenced.

5. A true and correct copy of the CBA between CPC and 1199, dated December 8, 2010, is annexed hereto as **Exhibit 1**.

6. A true and correct copy of the CBA between CPC and 1199, dated August 9, 2012, is annexed hereto as **Exhibit 2**.

7. A true and correct copy of the MOA extending and modifying the CBA, dated June 6, 2014 (“2014 MOA”), is annexed hereto as **Exhibit 3**.

8. A true and correct copy of the MOA extending and modifying the CBA, dated December 7, 2015 (“2015 MOA”), is annexed hereto as **Exhibit 4**.

9. A true and correct copy of the Letter from CPC to Arbitrator Martin Scheinman, initiating the contractual grievance and arbitration procedure, dated December 7, 2015 is annexed hereto as **Exhibit 5**.

Dated: New York, New York
December 15, 2015

/s/ Kenneth Kirschner